ESTTA Tracking number:

ESTTA659605 03/06/2015

Filing date:

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055558		
Party	Plaintiff Economy Rent-A-Car, Inc.		
Correspondence Address	NICOLE M MEYER DICKINSON WRIGHT PLLC 1875 EYE STREET NW, SUITE 1200 WASHINGTON, DC 20006 UNITED STATES trademark@dickinsonwright.com, nmeyer@dickinsonwright.com, slittle-page@dickinsonwright.com		
Submission	Opposition/Response to Motion		
Filer's Name	Melissa Alcantara		
Filer's e-mail	slittlepage@dickinsonwright.com, malcantara@dickinsonwright.com, mdicarlo@dickinsonwright.com, trademark@dickinsonwright.com		
Signature	/Melissa Alcantara/		
Date	03/06/2015		
Attachments	Opp to Motion to Reopen.pdf(210701 bytes ) Petitioner's Exhibit 1.pdf(23544 bytes ) Petitioner's Exhibit 2.pdf(27246 bytes ) Petitioner's Exhibit 3.pdf(29794 bytes ) Petitioner's Exhibit 4.pdf(26904 bytes ) Petitioner's Exhibit 5.pdf(93943 bytes ) Petitioner's Exhibit 6.pdf(111114 bytes )		

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**ECONOMY RENT-A-CAR, INC.** 

Petitioner.

V.

EMMANOUIL KOKOLOGIANNIS AND SONS, SOCIETE ANONYME OF TRADE, HOTELS AND TOURISM S.A.

Respondent.

Cancellation No. 92055558

Registration No. 3256667

### PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO REOPEN THE PERIOD TO SERVE PRETRIAL DISCLOSURES

#### Introduction

Petitioner Economy Rent-A-Car, Inc. and Respondent Emmanouil Kokologiannis And Sons, Societe Anonyme Of Trade Hotels And Tourism S.A., through their designated counsel of record, entered into an agreement—at Respondent's request—to extend the time (by two months) by which the Respondent was to take its testimony in the above-styled proceeding. In return for Petitioner's agreement allowing the time extension, Respondent agreed not to seek any time extension for serving its Pretrial Disclosure statement under the Board's then-operative Scheduling Order. Having since received the full benefit of the time extension for their testimony period, Respondent now seeks to renege on its prior agreement not to seek a delay in serving their Pretrial

Disclosure statement and, in fact, actually moves the Trademark Trial and Appeal Board (hereinafter, "the Board") to essentially condone that conduct on the part of Respondent.

Petitioner hereby opposes the motion of Respondent to reopen the time for serving its "Amended Pretrial Disclosures" statement in the above-styled proceeding. That motion involves a question as to whether counsel for the respective parties should be held to the written agreement that they expressly made concerning service of the Respondent's Pretrial Disclosure statement by the December 20, 2014 date entered in the Board's Scheduling Order of October 15, 2014 (Dkt. No. 36). Apart from the fact that parties (and their counsel) should be held to the agreements they reach during the course of proceedings before the Board, the basis for Petitioner's opposition to Respondent's motion is the absence of any sufficient showing by that party of "excusable neglect" for their requested reopening of the time for service of the amended disclosure statement.

#### Statement of Facts

Petitioner relies upon the following undisputed facts in support of its opposition to Respondent's motion:

- (1) On December 11, 2014, counsel for Respondent (Sharon Gobat) sent a written request to counsel for Petitioner (Samuel Littlepage) asking for an extension of time for both Respondent's pretrial disclosure and its testimony period. See **Petitioner's Exhibit 1**;
- (2) On December 12, 2014, counsel for Respondent further communicated with counsel for Petitioner and noted that the aforesaid time extensions could be moved back even further than initially suggested. See **Petitioner's Exhibit 2**:

- (3) On December 12, 2014, counsel for Petitioner responded to the aforesaid Requests by advising Respondent that Petitioner would <u>not agree</u> to "any extension of the December 20, 2014 deadline date" for service of Respondent's disclosure statement (but would agree to the two-month time extension sought by Respondent for the latter's testimony period). See **Petitioner's Exhibit 3**;
- (4) On December 15, 2014, counsel for Respondent notified Petitioner's counsel that she agreed with the proposal set forth in Petitioner's Exhibit 3 and Petitioner then acknowledged the agreement reached between counsel for the parties. See **Petitioner's Exhibit 4**;
- (5) On December 20, 2014, Respondent's counsel, pursuant to the abovenoted agreement reached with Petitioners counsel, timely served the latter with Respondent's Pretrial Disclosure Statement. See **Petitioner's Exhibit 5**;<sup>1</sup>
- (6) On February 17, 2015, Respondent's <u>new counsel</u> made an appearance in the Cancellation proceeding and, on February 18, 2015, served Petitioner's counsel with an "Amended Pretrial Disclosures" statement that recited new evidence and identified new witnesses. See **Petitioner's Exhibit 6**;
- (7) On February 19 2015, Petitioner's counsel advised Respondent's new counsel (Peter Sloan) that Petitioner objected to the new or "amended" Pretrial Disclosure set forth in Petitioner's Exhibit 6; and,
- (8) On February 22, 2015, the issue concerning the propriety of Respondent's "Amended Pretrial Disclosure" statement was discussed in a telephone conference between counsel and the Trademark Trial and Appeal Board attorney (Richard Kim). During that conference, Mr. Kim requested expedited briefing on whether Respondent could demonstrate excusable neglect sufficient to re-open the time for service of any new or amended Pretrial Disclosure Statement since the deadline date of December 20, 2014, had never been extended by agreement between the parties.

#### Argument

I. Respondent Has Not Demonstrated Excusable Neglect Sufficient To Reopen The Time For Service Of A New or Amended Pretrial Disclosure Statement.

Initially, it is to be noted that there was never any agreement or stipulation between the parties to alter, modify or otherwise extend the December 20, 2014,

Petitioner does not, of course, object to the initial Pretrial Disclosure Statement timely served by Respondent's prior counsel in accordance with the agreement reached between the parties.

deadline date of December 20, 2014 for the filing of Respondent's Pretrial Disclosure statement (indeed, the agreement was the contrary). That fact cannot possibly be in genuine dispute in view of Petitioner's Exhibits 1 through 5 *supra*. Thus, the Board is presented with a situation in which Respondent seeks to serve a new Pretrial Disclosure statement (regardless of its tactical use of the term "Amended") almost two months after the deadline date for service of such a disclosure statement under the Board's Scheduling Order (Dkt. No. 36) that controlled the timing of such a statement.

While the propriety for "reopening" the time for taking required action is a fact-sensitive one, the law governing the standard and analysis for determining such an issue has been repeatedly set forth by the Board in a number of decisions. See, Pumpkin Ltd. V. The Seed Corps, 43 U.S.P.Q.2d 1582 (TTAB, 1997), adopting the standard articulated by the Supreme Court in Pioneer Investment Services Co. v. Brunswick Associates, L.P., 507 U.S. 380 (1993). Where, as here, the time for taking an action has expired and a party desires to "reopen" the time for taking action, it must demonstrate "excusable neglect" under the relevant circumstances in order to do so. Id.; see also, Fed.R.Civ.P. 6(b)(1)(B).<sup>2</sup>

The Board has repeatedly stated that "the reason for the delay, including whether it was within the reasonable control of the movant" (the third of four analytical factors noted in *Pioneer*) may be deemed the most important of the considering factors under *Pioneer* in determining whether "excusable neglect" has been demonstrated by the

In applying the *Pioneer* standard for determining "excusable neglect," the Board takes into account all relevant circumstances surrounding a party's delay, including (but not necessarily limited to) the danger of prejudice to the non-movant, the length of the delay and its potential impact on the proceedings, the reason for the delay—including whether it was in the reasonable control of the movant and whether the movant acted in good faith.

moving party. See, for example: Luster Products, Inc. v. Van Zandt, 104 U.S.P.Q.2d 1877 (TTAB, 2012); Melwani v. Allegiance Corp., 97 U.S.P.Q.2d 1537 (TTAB, 2010); CTRL Systems, Inc. v. Ultraphonics of North America, Inc., 52 U.S.P.Q.2d 1300 (TTAB, 1999); HKG Industries, Inc. v. Perma-Pipe, Inc., 49 U.S.P.Q.2d 1156 (TTAB, 1998).

The determination of whether the failure to take an act in a timely manner was "excusable" is, of course, an equitable one and, as already noted, requires the consideration of all relevant circumstances. Those circumstances are set forth above in the "Statement of Facts" and clearly show that the parties entered into an agreement whereby Respondent's testimony period would be extended two months if there was no extension of the then-scheduled Pretrial Disclosure statement. Respondent accepted that agreement and its prior counsel timely served the Disclosure statement and received its two-month testimony time extension. New counsel now wishes to renege on that agreement, even though Respondent has already received the full benefits of that very agreement. Not only does equity demand enforcement of the agreement between counsel, but application of the *Pioneer* factors (especially the third factor) plainly warrants the rejection of Respondent's attempt to re-open the period for its Pretrial Disclosure statement in violation of the agreement that it previously entered into with Petitioner.

Respondent argues that there was never any agreement between the parties that would bar it from amending its Pretrial Disclosure statement in this proceeding and, in any event, the Board should determine Respondent's motion to reopen the period for its disclosure statement in accordance with the test outlined in *Great Seats, Inc. v. Great* 

Seats, Ltd., 100 U.S.P.Q.2d 1323 (TTAB, 2011).<sup>3</sup> See, Respondent's Brief, at pp. 4-5. Respondent is wrong on both assertions.

To argue that the agreement reached between counsel did not preclude a subsequent "amendment" of the Pretrial Disclosure Statement renders nugatory the very agreement to serve such a disclosure statement prior to the then-set Scheduling Order (which required the statement by December 20, 2014). This meaningless "word play" on the part of Respondent is not reasonable and lacks merit.

Respondent argues that "[a]bsent an agreement not to amend its Pretrial Disclosures, the Board should look at the *Great Seals* test to determine whether the amendment is permissible..."(emphasis added). Respondent's Brief, at p. 4. Respondent incorrectly argues the impact of the agreement that it struck with Petitioner, as well as the test for avoiding/ignoring that agreement. That agreement plainly stated that the time for serving the Pretrial Disclosure statement would not be extended past the Board-scheduled deadline date of December 20, 2014. To argue that nothing prohibited Respondent from later changing that disclosure statement would, as already noted, render the agreement pointless and illusory. To do so after Respondent received the full benefit of the agreement it struck would be particularly wrong and inequitable.

Even if the Board is uncertain as to what the "agreement" was with regard to the Pretrial Disclosure statement, the determination as to whether to allow Respondent to "re-open" the time for such a statement is governed under the oft-cited approach

Respondent misapprehends the correct issue before the Board—namely, whether Respondent should be permitted to "reopen" the time for pretrial disclosure statements after the deadline for such statements has expired. The *Great Seats* case involved a test for application of estoppel sanctions under Fed.R.Civ.P, 37(c) and is a test used when witnesses noticed to provide trial testimony have not been disclosed in Initial Disclosure statements or in response to discovery requests seeking the identity of such witnesses. That is <u>not</u> the issue before the Board in this case and, therefore, is not the appropriate test to determine whether Respondent has demonstrated such "excusable neglect" that would warrant the reopening of the time for its "amended" Pretrial Disclosure statement.

adopted in *Pumpkin*, rather than the approach used in *Great Seals*. While Respondent incorrectly ignores the correct test set forth in *Pumpkin*, it does reveal the reason for its delay, including whether that delay was within the reasonable control of the movant. As already noted, this is the most critical element in the *Pumpkin* analysis. Respondent essentially argues the agreement it entered into did not give it enough time to prepare its trial strategy and it had to communicate with witnesses located overseas. This case, however, has been pending for almost three years and Respondent does not explain why it could not have communicated with those witnesses at an earlier date (particularly since discovery in the case had closed almost nine (9) months earlier). Clearly, the excuses proffered by Respondent fall well short of those which would meet the critical third factor in *Pumpkin*.

#### Conclusion

Respondent seeks to "reopen" the time for serving or amending its Pretrial Disclosure statement, even though it admits that the December 20, 2014 deadline date for such statements expired several months ago. Thus, the merits of Respondent's motion must be determined under the approach outlined in *Pumpkin Ltd. v. The Seed Corps, supra; see* TBMP, §509.01(b)(1) ("Where the time for taking required action, as originally set or as previously reset, has expired, a party desiring to take the required action must file a motion to reopen the time for taking that action. The movant must show that its failure to act during the time previously allotted therefor was the result of excusable neglect....The analysis to be used in determining whether a party has shown

excusable neglect was set forth by the Supreme Court in *Pioneer Investment Services*Co. v. Brunswick Associates L.P., 507 U.S. 380 (1993), adopted by the Board in 
Pumpkin Ltd. v. The Seed Corps, 43 U.S.P.Q.2d 1582 (TTAB 1997)").

Respondent's above-noted reasons for explaining why it should now be permitted to reopen the period for serving an "amended" Pretrial Disclosure statement is woefully insufficient and does not provide it with a basis for re-opening the period for such an "amended" disclosure under the *Pumpkin* analysis. Accordingly, the Board is requested to deny Respondent's motion to reopen.<sup>4</sup>

Respectfully submitted,

Dated: March 6, 2015

/Melissa Alcantara/
Samuel D. Littlepage, Esquire
Melissa Alcantara, Esquire
DICKINSON WRIGHT PLLC

International Square Building 1875 Eye Street, N.W., Suite 1200 Washington, D.C. 20006-5420

Tel: (202) 457-0160 Fax: (202) 659-1559

Email: slittlepage@dickinsonwright.com malcantara@dickinsonwright.com

Counsel for Petitioner

While only marginally at issue in the present motion before the Board, it is noted that Respondent also requested a 30-day time extension to initiate its testimony period in this case. Respondent's testimony was to begin on March 5, 2015 and, therefore, Respondent has requested that the testimony period begin on April 4, 2015. The present motion has, however, required a "stay" of the proceedings. Thus, the Board is requested to take into account that suspension and, assuming the Respondent's testimony period is extended pursuant to the motion, to enter an Order setting that period to begin on April 4, 2015—which is the time extension sought by Respondent.

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing PETITIONER ECONOMY RENT-A-CAR, INC.'S OPPOSITION TO RESPONDENT'S MOTION TO REOPEN TIME TO SERVE ITS PRETRIAL DISCLOSURE STATEMENT was served this 6th day of March, 2015, upon Respondent's counsel of record, *via* first class mail, postage prepaid, and email as identified below:

Peter S. Sloane Cameron Reuber LEASON ELLIS LLP One Barker Avenue, Fifth Floor White Plains, New York 10601 Tel: (914) 288-0022

Fax: (914) 288-0023

Email: sloane@leasonellis.com

Michelle DiCarlo

Michelle DiCarlo

Paralegal

DC 39172-39 254809v1

# **PETITIONER'S EXHIBIT 1**

#### Samuel D. Littlepage

From:

Sharon Gobat <gobat@davincipartners.com>

Sent:

Thursday, December 11, 2014 2:44 PM

To:

Samuel D. Littlepage

Cc:

Melissa A. Alcantara; John Moetteli; Secretary

Subject:

Economy: scheduling for Respondent's testimony

#### Dear Samuel:

I hope you enjoyed a relaxing Thanksgiving holiday.

I write to address the topic of scheduling the next phase of the ECONOMY trademark cancellation case (TTAB proceeding no. 92055558). When we saw each other in Oklahoma City, you indicated you would be unavailable the first half of January. Myself, I will be unavailable February 3 - 6, 2015. With the holiday season fast approaching, we cannot hope to resolve questions about the manner of obtaining testimony of witnesses outside the United States until at least early January. After embassy officials are back from their holidays, I expect significant time will be needed to arrive at decisions (e.g. oral depositions or written questions) and arrangements.

Taking all this into account, we propose stipulating for Respondent's 30-day testimony period to end March 10, 2015, and for Respondent's pretrial disclosures to be due January 24, 2015.

Would this stipulation be acceptable to you and your client? If you wish discuss by telephone I will be available to do that Monday or Tuesday, 15 or 16 December, next week.

Thank you for your comprehension,

Sincerely,

Sharon Gobat, Esq.
Da Vinci Partners LLC
US and International Patent and Trademark Attorneys-at-law
Rathausgasse 1
CH-9320 Arbon
SWITZERLAND
Phone: +41 71 230 1000

Fax: +41 71 230 1001

# **PETITIONER'S EXHIBIT 2**

#### Samuel D. Littlepage

From:

Sharon Gobat < gobat@davincipartners.com>

Sent:

Friday, December 12, 2014 7:40 AM

To:

Samuel D. Littlepage

Cc:

Melissa A. Alcantara; John Moetteli; Secretary

Subject:

Re: Economy: scheduling for Respondent's testimony

#### Dear Samuel:

We are ok with pushing the dates farther into spring 2015. It would have the effect of reducing overall costs of any oral depositions that may be held outside the US. Also I was thinking, if we do have any depositions on written questions, Respondent's testimony period will be extended to accommodate that; so my original suggestion of a 30-day testimony period ending March 10 would end up probably occupying all of March. Perhaps we could move the pretrial disclosures date to mid- or late March. What do you think?

Sincerely,

Sharon Gobat, Esq., Of Counsel Da Vinci Partners LLC

On 11 Dec 2014, at 22:20, Samuel D. Littlepage <<u>SLittlepage@dickinson-wright.com</u>> wrote:

#### Sharon:

I am checking with my client and will get back to you. At present, my primary concern is the possible conflict I might have with another case during the month of March and, for that reason, we may have to push things back to April. However, I am working on resolving that issue and I will get back to you on that problem as well.

#### Samuel D. Littlepage Member

International Square 1875 Eye St. N.W. Suite 1200

Phone 202-659-6920 Fax 202-659-1559

Washington, D.C. 20006

Email SLittlepage@dickinsonwright.com

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<imagefa6914.JPG>

From: Sharon Gobat [mailto:gobat@davincipartners.com]

Sent: Thursday, December 11, 2014 2:44 PM

To: Samuel D. Littlepage

Cc: Melissa A. Alcantara; John Moetteli; Secretary

Subject: Economy: scheduling for Respondent's testimony

## **PETITIONER'S EXHIBIT 3**

#### Samuel D. Littlepage

From:

Samuel D. Littlepage

Sent:

Friday, December 12, 2014 1:37 PM

To:

'Sharon Gobat'

Cc:

Melissa A. Alcantara; John Moetteli; Secretary

Subject:

RE: Economy: scheduling for Respondent's testimony

#### Sharon:

We will not agree to any extension of the December 20, 2014 deadline date for you to file and serve your client's Pretrial Disclosure Statement. We will, however, agree to a two-month extension of your client's trial testimony period (and, of course, the subsequent remaining rebuttal period and briefing dates). If satisfactory, you may submit the appropriate motion and note that the Petitioner has consented to it.

From: Sharon Gobat [mailto:qobat@davincipartners.com]

Sent: Friday, December 12, 2014 7:40 AM

To: Samuel D. Littlepage

Cc: Melissa A. Alcantara; John Moetteli; Secretary

Subject: Re: Economy: scheduling for Respondent's testimony

#### Dear Samuel:

We are ok with pushing the dates farther into spring 2015. It would have the effect of reducing overall costs of any oral depositions that may be held outside the US. Also I was thinking, if we do have any depositions on written questions, Respondent's testimony period will be extended to accommodate that; so my original suggestion of a 30-day testimony period ending March 10 would end up probably occupying all of March. Perhaps we could move the pretrial disclosures date to mid- or late March. What do you think?

#### Sincerely,

Sharon Gobat, Esq., Of Counsel Da Vinci Partners LLC

On 11 Dec 2014, at 22:20, Samuel D. Littlepage <<u>SLittlepage@dickinson-wright.com</u>> wrote:

#### Sharon:

I am checking with my client and will get back to you. At present, my primary concern is the possible conflict I might have with another case during the month of March and, for that reason, we may have to push things back to April. However, I am working on resolving that issue and I will get back to you on that problem as well.

#### Samuel D. Littlepage Member

International Square 1875 Eye St. N.W. Suite 1200

Phone 202-659-6920 Fax 202-659-1559

Washington, D.C. 20006

Email <u>SLittlepage@dickinsonwright.com</u>

# **PETITIONER'S EXHIBIT 4**

#### Samuel D. Littlepage

From:

Samuel D. Littlepage

Sent:

Monday, December 15, 2014 1:28 PM

To:

'gobat@davincipartners.com'

**Subject:** 

Re: Economy: scheduling for Respondent's testimony

Yes--that is fine.

From: Sharon Gobat [mailto:gobat@davincipartners.com]

Sent: Monday, December 15, 2014 01:19 PM

To: Samuel D. Littlepage

Cc: Melissa A. Alcantara; John Moetteli <moetteli@davincipartners.com>; Secretary <secretary@davincipartners.com>

Subject: Re: Economy: scheduling for Respondent's testimony

#### Dear Samuel:

Thank you for your message. We will file and serve Respondent's pretrial disclosures according to the December 20, 2014 deadline.

A two-month extension for Respondent's trial testimony period would make it run from March 4, 2015 through April 3, 2015. You had indicated you might have a conflict with another case in March. So, can you please verify that the two-month extension (and not more) is what you would stipulate to?

Thanks, sincerely,

Sharon Gobat, Esq., Of Counsel Da Vinci Partners LLC

On 12 Dec 2014, at 19:37, Samuel D. Littlepage <<u>SLittlepage@dickinson-wright.com</u>> wrote:

#### Sharon:

We will not agree to any extension of the December 20, 2014 deadline date for you to file and serve your client's Pretrial Disclosure Statement. We will, however, agree to a two-month extension of your client's trial testimony period (and, of course, the subsequent remaining rebuttal period and briefing dates). If satisfactory, you may submit the appropriate motion and note that the Petitioner has consented to it.

#### Samuel D. Littlepage Member

International Square 1875 Eye St. N.W.

Phone 202-659-6920

Suite 1200

Fax 202-659-1559

Washington, D.C. 20006

Email SLittlepage@dickinsonwright.com

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# **PETITIONER'S EXHIBIT 5**

#### Samuel D. Littlepage

From:

Sharon Gobat <gobat@patentinfo.net>

Sent:

Saturday, December 20, 2014 11:02 PM

To:

Samuel D. Littlepage

Cc:

Nicole M. Meyer, Melissa A. Alcantara; Secretary; John Moetteli

Subject:

Economy: Respondent's pretrial disclosures

**Attachments:** 

92055558-Respondent-pretrial-disclosures-2014-12-20,pdf

CONFIDENTIAL COMMUNICATION— if this message is addressed to you directly by the sender, or in the cc fields, you may read and act on this message. Otherwise, you have no right to read or copy this message. We therefore ask your cooperation in informing the sender of the error in receipt and in deleting this message from all your email folders. Thank you in advance for your assistance.

>>>Please confirm receipt<<<<

#### Dear Samuel:

As promised, attached please find Respondent's pretrial disclosures in the TTAB Cancellation proceeding no. 92055558.

#### Sincerely,

Sharon Gobat, Esq., Of Counsel
Da Vinci Partners LLC
US and International Patent and Trademark Attorneys-at-law
Rathausgasse 1
CH-9320 Arbon
SWITZERLAND

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ECONOMY RENT-A-CAR INC.

Petitioner,

v.

EMMANOUIL KOKOLOGIANNIS AND SONS, SOCIETE ANONYME OF TRADE, HOTELS AND TOURISM S.A.

Respondent.

Cancellation No. 92055558

Registration No. 3256667

#### RESPONDENT'S RULE 26(a) PRETRIAL DISCLOSURES

Pursuant to 37 C.F.R. §2.12(e) and Rule 26(a)(3)(A) of the Federal Rules of Civil Procedure, Respondent Emmanouil Kokologiannis and Sons, Societe Anonyme of Trade, Hotels and Tourism S.A. hereby notifies Petitioner Economy Rent-A-Car, Inc. of Respondent's intention to take the testimony, and introduce exhibits during such testimony, of the persons identified below.

Respondent will call the following individuals to testify in the above-captioned proceeding and intends to introduce the types of documents identified below in connection with that testimony.

(1) Yorgos Kokologiannis
President
Emmanouil Kokologiannis and Sons,
Societe Anonyme of Trade, Hotels and Tourism S.A.
Agia Pelagia
715 00 Heraklion
Crete, Greece
Tel: +30 2810 812012

- (2) Robert (Bob) Thunell BLT Consulting, LLC 5829 E. 58<sup>th</sup> St. Tulsa, OK 74135 Tel: (305) 519-9080
- (3) Alejandro Muniz
  President
  Economy Rent-A-Car, Inc.
  1080 Centro Colon
  San Jose, Costa Rica
  P.O. Box 1007
  Tel: 786-975-2222

Mr. Kokologiannis is the President of the named Respondent in this proceeding. He has knowledge of, and will testify about, the past and current use of Respondent's ECONOMY CAR RENTALS & design trademark that is the subject of this cancellation proceeding. Within the context of the governing protective order, Mr. Kokologiannis will provide testimony relative to Respondent's website traffic, advertising expenditures, and customer bookings. Mr. Kokologiannis will testify concerning Respondent's knowledge of, and interaction with, Petitioner. During Mr. Kokologiannis' testimony, the following kinds of documents may be introduced as exhibits:

- (a) Screenshots taken from Respondent's websites;
- (b) Copies of trademark registrations owned by Respondent;
- (c) Internal audit reports concerning investments in advertising;
- (d) Examples of booking documents provided by Respondent to customers;
- (e) Internal reports concerning Respondent's website traffic;
- (f) Examples of Respondent's advertising;
- (g) Copies of correspondence received from Petitioner.

Mr. Thunell is, upon information and belief, principal in BLT Consulting, LLC, an Oklahoma company, and signatory on certain agreements concerning the transfer of an alleged service mark ECONOMY RENT-A-CAR to Petitioner's related company. Mr. Thunell will be asked to testify concerning those agreements. Mr. Thunell will also be asked to testify concerning his past and present relationships with Petitioner and Petitioner's related companies. He will also be asked to testify concerning his knowledge of the ECONOMY RENT-A-CAR mark that Petitioner pleads in this proceeding as the basis for its claim of priority. The types of documents that may be introduced during Mr. Thunell's testimony include trademark assignment and license agreements that mention BLT Consulting, LLC, and publicly available documents concerning BLT Consulting, LLC as a company.

Mr. Muniz is President and CEO of the named Petitioner in this proceeding. Mr. Muniz will be asked to testify concerning the transfers of rights in the pleaded ECONOMY RENT-A-CAR service mark. Mr. Muniz will also be asked to testify concerning his personal knowledge of BLT Consulting, LLC and Mr. Thunell. He will also be asked to testify concerning Petitioner's commercial correspondence, interaction, and relationship with Respondent. It is anticipated that during Mr. Muniz's testimony, the following types of documents may be introduced as exhibits:

- (a) Agreements concerning the transfer of rights in Petitioner's pleaded mark;
- (b) Copies of correspondence from Petitioner addressed to Respondent.

\*\*\*\*\*

Respondent reserves the right to amend these pretrial disclosures. Nothing herein shall preclude the use of the identity of any witness for rebuttal and/or impeachment purposes, nor the use or introduction of evidence by way of notices of reliance and other means provided under the Trademark Rules of Practice.

Emmanouil Kokologiannis and Sons, Societe Anonyme of Trade, Hotels and Tourism S.A.

December 20, 2014

By: /Sharon Gobat/

John Moetteli, Esq. Sharon Gobat, Esq. Da Vinci Partners LLC St. Leonhardstrasse 4 CH-9000 St. Gallen Switzerland

Tel: 011 4171 230 1000 Fax: 011 4171 230 1001

Email: moetteli@davincipartners.com Email: gobat@davincipartners.com

Counsel for Respondent

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

88888

8088888

**ECONOMY RENT-A-CAR INC.** 

Petitioner,

v.

EMMANOUIL KOKOLOGIANNIS AND SONS, SOCIETE ANONYME OF TRADE, HOTELS AND TOURISM S.A.

Respondent.

Cancellation No. 92055558

Registration No. 3256667

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Respondent's Rule 26(a) Pretrial Disclosures is being served upon Counsel for the Petitioner, via email, by fax, and by Priority Mail, as identified below:

Samuel D. Littlepage, Esquire Nicole M. Meyer, Esquire Melissa Alcantara, Esquire DICKINSON WRIGHT PLLC

1875 Eye St. N.W.

**Suite 1200** 

Washington, D.C. 20006-5420

Fax: 001 (202) 659-1559

Email:

slittlepage@dickinsonwright.com

Email:

nmeyer@dickinsonwright.com

Email:

malcantara@dickinsonwright.com

Date: December 20, 2012

/Sharon Gobat/

## **PETITIONER'S EXHIBIT 6**

#### Samuel D. Littlepage

From:

Deirdre Clarke <clarke@leasonellis.com>

Sent:

Wednesday, February 18, 2015 9:42 PM

To:

Samuel D. Littlepage

Cc:

Nicole M. Meyer; Peter S. Sloane; Cameron Reuber

Subject:

RE: Economy Rent-A-Car, Inc. TTAB Cancellation No. 92055558

Attachments:

Motion to Extend Deadlines (01272586).pdf; Pretrial Disclosures - economy v.

kokologiannis (01272585).pdf

Dear Mr. Littlepage:

Attached, please find copies of Respondent's Motion to Extend Relevant Deadlines and Pre-trial Disclosures. Hard copies will follow via first-class mail.

Regards,

Deirdre A. Clarke
LEASON ELLIS.
One Barker Avenue
Fifth Floor
White Plains, New York 10601
clarke@LeasonEllis.com
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From: Deirdre Clarke

**Sent:** Tuesday, February 17, 2015 4:47 PM **To:** 'slittlepage@dickinsonwright.com'

Cc: 'nmeyer@dickinsonwright.com'; Peter S. Sloane; Cameron Reuber Subject: RE: Economy Rent-A-Car, Inc. TTAB Cancellation No. 92055558

Dear Mr. Littlepage:

Further to our email below, we have filed a Notice of Appearance in the above cancellation proceeding. A copy is attached.

Regards,

Deirdre A. Clarke LEASON ELLIS.

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,256,667	37	
ECONOMY RENT-A CAR INC.,	:	
Petitioner,	:	Cancellation No. 92048732
V.	:	
EMMANOUIL KOKOGIANNIS	:	
AND SONS, SOCIETE ANONYME	:	
OF TRADE, HOTELS AND TOURISM	:	
S.A.,	•	
Respondent.	:	
	X	

#### RESPONDENTS' AMENDED PRETRIAL DISCLOSURES

Respondent, Emmanouil Kokologiannis and Sons, Societe Anonyme of Trade, Hotels and Tourism S.A. ("Respondent"), by and through their attorneys, Leason Ellis LLP, for their pretrial disclosures pursuant to Fed.R.Civ.P. 26(a)(3) and TBMP 702.01, make the following pretrial disclosures to Petitioner, Economy Rent-A-Car Inc. ("Petitioner"), of the witnesses from whom Petitioners may take testimony during their trial testimony period, of the subjects on which such witnesses are expected to testify, and the types of documents and things which may be introduced as exhibits during the testimony of such witnesses.

Yorgos Kokologiannis
 President, Emmanouil Kokologiannis and Sons,
 Societe Anonyme of Trade, Hotels and Tourism S.A.
 Agia Pelagia
 715 00 Heraklion
 Crete, Greece
 Tel.: +30 2810 812012

Mr. Kokologiannis is the President of the named Respondent in this proceeding. He has knowledge of, and will testify about, the past and current use of Respondent's ECONOMY CAR

RENTALS & design trademark that is the subject of this cancellation proceeding. Within the context of the governing protective order, Mr. Kokologiannis will provide testimony relative to Respondent's website traffic, advertising expenditures, and customer bookings. Mr. Kokologiannis will testify concerning Respondent's knowledge of, and interaction with, Petitioner. Certain documents and things may be introduced as exhibits during the testimony of Mr. Kokologiannis including screenshots taken from Respondent's websites, trademark registrations, internal audit reports concerning investments in advertising, examples of booking documents provided by Respondent to customers, internal reports concerning Respondent's website traffic, advertising materials and copies of correspondence received from Petitioner.

2. Robert Thunell
BLT Consulting, LLC
5829 E. 58<sup>th</sup> Street
Tulsa, OK 74135
Tel.: 305-519-9080

Mr. Thunell is principal in BLT Consulting, LLC, an Oklahoma company, and signatory on certain agreements concerning the transfer of an alleged service mark ECONOMY RENT-A-CAR to Petitioner's related company. Mr. Thunell will be asked to testify concerning those agreements. Mr. Thunell will also be asked to testify concerning his past and present relationships with Petitioner and Petitioner's related companies. He will also be asked to testify concerning his knowledge of the ECONOMY RENT-A-CAR mark that Petitioner pleads in this proceeding as the basis for its claim of priority.

Certain documents and things may be introduced as exhibits during the testimony of Mr.

Thunell including a trademark assignment and license agreements that mention BLT Consulting,

LLC, and publicly available documents concerning BLT Consulting, LLC as a company.

3. Alejandro Muniz
President
Economy Rent-A-Car, Inc.
1080 Centro Colon

San Jose, Costa Rica

P.O. Box 1007

Tel.: 786-975-2222

Mr. Muniz is President and CEO of the named Petitioner in this proceeding. Mr. Muniz will be asked to testify concerning the transfers of rights in the pleaded ECONOMY RENT-A-CAR service mark. Mr. Muniz will also be asked to testify concerning his personal knowledge of BLT Consulting, LLC and Mr. Thunell. He will also be asked to testify concerning Petitioner's commercial correspondence, interaction, and relationship with Respondent.

Certain documents and things may be introduced as exhibits during the testimony of Mr.

Muniz including agreements concerning the transfer of rights in Petitioner's mark and copies of correspondence from Petitioner addressed to Respondent.

Ioanna Myridaki
 Account Manager, Google
 Docs Building, Barrow Street
 Dublin 4, Ireland

Tel.: +353 1 543 3083

Ms. Myridaki is Respondent's Google account manager, based in Dublin, Ireland. She will testify concerning Respondent's expenditures for advertising and promotion. Certain documents and things may be introduced as exhibits during the testimony of Ms. Myridaki including statistical summaries of annual advertising impressions in the United States, annual advertising expenditures targeted to US consumers, and US consumer recognition and perception of Respondent's brand.

5. Micael Wäxby
CEO, SoftIT AB
Kåsatorpsvägen 5
541 34 SKÖVDE

Tel.: +46 500 41 3000

Mr. Wäxby is CEO of SoftIT AB, a Swedish company that provides web development, software

architecture, e-commerce platform, and database development services, among others, to

businesses. He has been Respondent's partner in developing Respondent's proprietary software

and database infrastructures. Mr. Wäxby will testify concerning Respondent's investments in

these infrastructures. Certain documents and things may be introduced as exhibits during the

testimony of Mr. Wäxby including account statements and technical documentation related to

information technologies.

Respondent reserves the right to call witnesses for rebuttal and will so identify any such

witnesses by the applicable deadline. Respondent further reserves the right to supplement these

disclosures.

Respectfully submitted,

Date: February 18, 2015

White Plains, New York

Peter S. Sloane Cameron Reuber

LEASON ELLIS LLP

One Barker Avenue, Fifth Floor White Plains, New York 10601

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E-mail: sloane@leasonellis.com E-mail: reuber@leasonellis.com

Attorneys for Respondent

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#### **CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing RESPONDENT'S AMENDED PRETRIAL DISCLOSURES was served upon counsel for Petitioner, this 18th day of February, 2015, by First-Class mail, postage prepaid, addressed as follows:

Samuel L. Littlepage, Esq.
Nicole M. Meyer, Esq.
Melissa Alcantara, Esq.

DICKINSON WRIGHT PLLC
1875 Eye St. N.W., Suite 1200
Washington, D.C. 20006-5420

Deirdre A. Clarke